INDEX

PAGE

Table of Cases

PAGE

OTHER AUTHORITIES

IN THE

Supreme Court of the United States

No. 127

October Term, 1958

ALBERTIS S. HARRISON, JR., Attorney General of Virginia, *et al.*,

Appellants,

—v.—

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a Corporation, and NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., a Corporation,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, RICHMOND DIVISION

BRIEF FOR APPELLEES

Statement of the Case

1. Proceedings Below

On November 28, 1956, appellees National Association for the Advancement of Colored People (the Association) and N. A. A. C. P. Legal Defense and Educational Fund, Inc. (the Fund) brought separate actions for declaratory and injunctive relief against the Attorney General of Virginia and five Commonwealth Attorneys upon the claim that Chapters 31, 32, 33, 35 and 36[1] of the Acts enacted

[1] "These Acts have been respectively codified in the Code of Virginia at §§18-349.9, et seq., 18-349.17 et seq., 54-74, 78, 79; 18-349.25 et seq., and 18-349.31 et seq." (R. 44).

by the General Assembly of Virginia at the 1956 Extra Session are unconstitutional and in violation of the Commerce Clause, and the First and Fourteenth Amendments to the Constitution of the United States (R. 1-15, 24-37, 44).

Appellants responded with identical motions to dismiss which, *inter alia*, urged the District Court to withhold exercise of its jurisdiction (R. 17, 39); and, after the denial of these motions following a consolidated hearing thereon, answers were filed which renewed the contentions of these motions (R. 20 et seq., 40 et seq., 64). Trial on the merits was set and heard September 16-19, 1957 (R. 129, 457). Thereafter, on January 21, 1958, the District Court, one judge dissenting, filed an opinion which declared Chapters 31, 32 and 35 unconstitutional and enjoined their enforcement as violative of the requirements of equal protection and due process; but remitted appellees to the state courts for an interpretation of Chapters 33 and 36 (R. 43 et seq.). Judgment was entered on April 30, 1958 (R. 122-23).

Thereupon this appeal was perfected (R. 124-26); and this Court noted probable jurisdiction on October 13, 1958 (R. 647).

2. Statutes Involved

Full texts of the lengthy statutes involved on this appeal, i.e., Chapters 31, 32 and 35, have been set out in Appellants' Appendix I. The "cardinal provisions" of the legislation assailed below, however, are succinctly summarized by the District Court (R. 52-53), as follows:

> The five statutes against which the pending suits are directed, that is Chapters 31, 32, 33, 35 and 36 of the Acts of the General Assembly of Virginia, passed at its Extra Session in 1956, were enacted for the express purpose of impeding the integration of the races in the public schools of the state which the

plaintiff corporations are seeking to promote. The cardinal provisions of these statutes are set forth generally in the following summary.

Chapters 31 and 32 are registration statutes. They require the registration with the State Corporation Commission of Virginia of any person or corporation who engages in the solicitation of funds to be used in the prosecution of suits in which it has no pecuniary right or liability, or in suits on behalf of any race or color, or who engages as one of its principal activities in promoting or opposing the passage of legislation by the General Assembly on behalf of any race or color, or in the advocacy of racial integration or segregation, or whose activities tend to cause racial conflicts or violence. Penalties for failure to register in violation of the statutes are provided.

Chapters 33, 35 and 36 relate to the procedure for suspension and revocation of licenses of attorneys at law, to the crime of barratry and to the inducement and instigation of legal proceedings. It is made unlawful for any person or corporation: to act as an agent for another who employs a lawyer in a proceeding in which the principal is not a party and has no pecuniary right or liability; or to accept employment as an attorney from any person known to have violated this provision; or to instigate the institution of a law suit by paying all or part of the expenses of litigation, unless the instigator has a personal interest or pecuniary right or liability therein; or to give or receive anything of value as an inducement for the prosecution of a suit, in any state or federal court or before any board or administrative agency within the state, against the Commonwealth, its departments, subdivisions, officers and employees; or to advise, counsel, or otherwise instigate the prosecution of such

a suit against the Commonwealth, etc., unless the instigator has some interest in the subject or is related to or in a position of trust toward the plaintiff. Penalties for the violation of these statutes are provided.

The legislative history of these statutes to which we now refer conclusively shows that they were passed to nullify as far as possible the effect of the decision of the Supreme Court in Brown v. Board of Education, 347 U. S. 483 and 349 U. S. 294.

3. Statement of Facts

Although appellees know that this Court previously considered the functioning of the Association in *National Association for the Advancement of Colored People* v. *Alabama*, 357 U. S. 449, and even though we believe that the opinion of the District Court contains a concise statement of the material facts (R. 45-52, 53-60, 61), we feel obliged to present our statement of facts because appellants' presentation of the case does not state all that is material to the consideration of the questions raised on this appeal.

The Association and the Fund are each non-profit New York membership corporations (R. 45, 49, 276, 498-99). Both are registered in the Commonwealth of Virginia as foreign corporations (R. 45, 49, 191-92, 276-77). The activities engaged in pursuant to their charters, their organizational structure and their mode of operation, however, differ.

"The Association"

Organized in 1909, the Association was incorporated in 1911 (R. 45, 165, 496-502) for the following principal purposes:

> . . . voluntarily to promote equality of rights and eradicate caste or race prejudice among the citizens of the United States; to advance the interest of colored citizens; to secure for them impartial suffrage; and to increase their opportunities for securing justice in the courts, education for their children, employment according to their ability, and complete equality before the law.
>
> To ascertain and publish all facts bearing upon these subjects and to take any lawful action thereon; together with any and all things which may lawfully be done by a membership corporation organized under the laws of the State of New York for the further advancement of these objects (R. 45-46, 498-99).

And its ultimate goal, in short, may be said to be the eradication of those twin viruses of second class citizenship—segregation and discrimination based on race or color (R. 170).

To these ends the Association engages in three broad types of activity: one, contributing monies to defray the costs of litigation, including attorneys' fees, which challenges the validity of governmentally imposed or enforced segregation and discrimination on account of race or color; two, promoting legislation which would tend to eliminate such segregation or discrimination and opposing legislation which would restrict the opportunities of the Negro minority for equalitarian status or deny them rights secured under the law of the land; and, three, disseminating through public speeches and printed publications information which advocates racial nonsegregation in the enjoyment of public facilities and which also publicizes the Association's objectives and activities (R. 170-71, 172, 179, 180). To conduct these activities, income and fund raising, of necessity, are constant ingredients in the program of the Association (R. 172).

N.A.A.C.P. activities are carried on in Virginia by local members of the Association and such officers or employees of the Association as are requested to supply their talents by the local membership (R. 172-73). This membership, in conformity with the charter and constitution of the Association (R. 498-99, 503), is organized into 89 chartered affiliates called Branches which, jointly with the Association, contribute toward the support of a statewide subordinate unit named the Virginia State Conference of N.A.A.C.P. Branches (the State Conference) (R. 46, 134, 135-36, 168-70).

The State Conference is the spearhead of the Association's activities in Virginia; for it not only coordinates the activities of the Branches and supervises local membership and fund-raising campaigns but it also represents and acts for the entire Virginia membership on matters of statewide importance (R. 47, 134, 135-36). It appears before the General Assembly and State Commissions to voice support of, or opposition to, measures which, according to its construction, advance or retard the status of the Negro in Virginia (R. 47, 134, 136). It conducts intensive educational programs designed to encourage Negroes to satisfy voting requirements and vote (R. 47, 134, 135), to acquaint the people of Virginia with the facts regarding the harmful aspects of racial segregation and discrimination (R. 47, 134), and to instill in Negroes a knowledge of their legal rights and encourage their assertion when violations occur (R. 47, 135, 148). In carrying out this program all of the media of free expression of ideas are used, e.g., public meetings, conferences, distribution of pamphlets, letter writing, etc. (R. 47-48, 147-48).

Furthermore, the State Conference contributes, or obligates itself to contribute, financial assistance for defraying all or part of the counsel fees and costs incurred in litiga-

tion involving racial discrimination or segregation (R. 48, 135, 136, 142-43). Before the Conference obligates itself in a case, several criteria must be met. First, there must be a genuine grievance involving discrimination on account of race or color; secondly, the complaint must involve of discrimination or segregation imposed under the color of state authority and it must present a justiciable controversy (R. 48, 150-52, 156, 184, 207, 210).

In the furtherance of its legal program the State Conference has established a legal committee, commonly referred to as the Legal Staff; and, at present, it is composed of thirteen members located in seven different communities scattered over most of the state (R. 48, 157). The members of the Legal Staff are elected at the annual convention of the State Conference and they in turn elect a Chairman (*Id.*).

Cases usually arise by the aggrieved parties contacting a member or members of the Legal Staff, but in a number of instances the grievance is brought to the attention of the Executive Secretary of the Conference who refers the complaining parties to the Chairman of the State Legal Staff if there appears to be a genuine grievance involving racial discrimination or segregation (R. 48, 149-50, 207). The Chairman confers with the aggrieved party and then decides whether the discrimination or segregation suffered is imposed under color of state authority and presents a justiciable controversy (R. 48, 150, 209, 210). If the decision is that the complaint squares with these criteria, the Chairman informs the complainant that he will recommend that the Conference assist him in his case (R. 48, 150, 209).

The Chairman communicates his recommendations to the President of the State Conference and upon his concurrence the Conference obligates itself to defray in whole or part the costs and expenses of the litigation (R. 48,

150). Counsel for the complainants, either by choice or acquiescence, has usually been a member or members of the Conference's Legal Staff (R. 48, 152, 153, 159, 324).

Finally, when the Conference honors its obligation, it reimburses the litigant's counsel for out-of-pocket expenditures (for travel, stenographic service, etc.) and pays him a per diem compensation for the days spent in preparation and trial of the litigation (R. 48, 209-10, 646-47). Compensation of counsel on such a basis is not only modest but far out of proportion to the actual time and energy spent in civil rights litigation (R. 321, 325, 329); and counsel have accepted even less than due under this formula (R. 331).

The principal source of income for the Association and its units is derived from membership fees solicited during the various local membership drives; other sources of income are public fund raising rallies or meetings and contributions, some of which are not solicited directly (R. 46, 148, 163, 169). The Association enrolled 13,595 members in Virginia during the first eight months of 1957 (R. 46, 136, 137, 174), and the majority of the Branches in Virginia conduct their annual membership drives in the spring and summer months (R. 176). By contrast, membership figures for the same eight month period for the previous three years were 19,436 in 1956, 16,130 in 1955 and 13,583 in 1954 (R. 46, 137, 174).

The income of the Association from its Virginia Branches for the first eight months of 1957 was $37,470.60 as compared with $43,612.75 for the same period in 1956 (R. 46-47, 68, 173, 642, 643).

Of the $38,469.59 which the Association received from all sources in Virginia during the first eight months of 1957, $37,470.60 came from Branches (R. 46, 68, 173, 642).

The corresponding amounts for the same period in 1956 are $44,138.71 and $43,612. (R. 46, 68, 643). From the country as a whole—the Association has branches in 44 states and the District of Columbia (R. 46, 67)—the Association's income for the first eight months of 1957 and 1956 was $425,608.13 and $598,612.84, respectively (R. 46-47, 68, 173, 642, 643).

The fall off in Virginia memberships and drop in income from Branches in Virginia is attributed to the impact of the challenged legislation (R. 61, 62-63, 140, 141). Inquiries made by solicitors working in Branch membership campaigns and samplings made by the Executive Secretary of the State Conference revealed that individuals who failed to renew their memberships, as well as former campaign workers, were generally apprehensive as to the application of the assailed legislation to themselves and feared that reprisals would be directed against them should their membership in the Association be made a matter of public record (R. 61, 137, 139-41, 236-38).

Public identification of Virginians as members of the Association (R. 61, 234-35, 251, 254, 263), or as plaintiffs in the antisegregation suits in which the Association is identified (R. 230, 239, 252, 258), or as advocating compliance with the antisegregation decisions of federal courts (R. 244-45, 264-65) has exposed them and their families to threats of violence to person and property (R. 61, 232, 246, 260-61, 265, 266), various forms of intimidation such as cross-burning (R. 61, 246-47, 265-66) and the hanging of an effigy (R. 61, 235), social ostracism (R. 61, 248, 266), economic reprisals (R. 239-41, 248) and a variety of personal annoyances such as persistent insulting or obscene anonymous telephone calls, letters and "bus stop editorials" (R. 61, 230-32, 234-36, 245-46, 251-52, 253-54, 258-61, 265-66). The experiences of most of these "exposed persons" and

many others, too, have been given widespread publicity in Virginia newspapers (R. 61, 127, 269-72, 459-63), including Negro as well as white publications (R. 269-72, 459-63, 492).

The local press, by publishing news stories and columns which described the assailed legislation as being anti-N.A.A.C.P. measures with grave penalties for any violation thereof, again gave cause for the apprehensiveness regarding the application of the challenged legislation to members, contributors and all other persons who associate themselves with the activities of either the Association or the Fund (R. 61, 140, 191, 236-38, 269-72, 274, 459-63). Laymen were not alone in this boat; similar analyses made members of the legal profession hesitant and apprehensive, too (R. 61, 321-22, 326, 330).

"The Fund"

The Fund was incorporated in 1940 (R. 49, 276) and its charter describes its principal purposes as follows:

(a) To render legal aid gratuitously to such Negroes as may appear to be worthy thereof, who are suffering legal injustices by reason of race or color and unable to employ and engage legal aid and assistance on account of poverty.

(b) To seek and promote the educational facilities for Negroes who are denied the same by reason of race or color.

(c) To conduct research, collect, collate, acquire, compile and publish facts, information and statistics concerning educational facilities and educational opportunities for Negroes and the inequality in the educational

facilities and education opportunities provided for Negroes out of public funds; and the status of the Negro in American life (R. 49, 277-78, 304).

Moreover, inasmuch as the Fund's purposes include rendering legal aid and services, its activities as a legal aid society have been approved by the Appellate Division of the Supreme Court of New York, First Judicial Department, without objections from any of the several bar associations (R. 49-50, 314).

Unlike the Association, the Fund has no affiliated or subordinate units (R. 50, 278); its one office is located in New York City (*Id.*). In order to implement its objectives, the Fund employs a full-time staff of six resident attorneys and three research attorneys, all of whom are stationed in New York (R. 50, 279, 281), two educational specialists (R. 303), one of whom is in the field, and a social scientist who does non-legal research (R. 303). The Fund has also secured the services of four lawyers on annual retainers (R. 50, 279); they reside in and conduct their private practices at Richmond, Dallas, Los Angeles and Washington, D. C. (R. 50, 279, 288, 301-02). Moreover, the Fund has engaged other counsel on a case-by-case fee basis for investigations and research (R. 50, 285-86, 298, 319). And the Fund has on call about a hundred attorneys (R. 50, 278) and a large number of social scientists (R. 50, 286, 292) whose services are available on a volunteer or expenses-only basis.

Participation in litigation which falls within the scope of its charter, legal and general research, the dissemination of information and fund raising are the activities carried on by the Fund (R. 49, 50, 277-78, 279, 281). With respect to litigation, the Fund's policy forbids it from taking any part in a case unless a request for services or funds is made by either the party in interest or his attorney (R.

280, 290). If this is done, and the case not only involves a threatened or actual denial of civil rights but is basically meritorious, the Fund furnishes the requested assistance—advice, services or finances including the entire cost of litigation and lawyers fees (R. 279, 284-85, 318-19).

Since its inception, the Fund has been associated in some way with about every leading civil rights case (R. 50, 281-83). Moreover, it is unique in that no other organization provides gratuitously the assistance and services which it does either on a national basis or in Virginia (R. 50, 283, 292, 293).

A considerable amount of the Fund's efforts is devoted to research (R. 51, 281, 298, 319). In the main, the legal research done by staff members and volunteers is utilized in connection with pending litigation although it is available for use by lawyers and law schools (R. 50, 279, 287).

The educational activities of the Fund are varied. In addition to disseminating research materials, staff members do considerable public speaking at meetings sponsored by community organizations as well as lecturing in colleges and universities on various topics, ranging from constitutional law through civil rights to patterns of human relations (R. 50, 281). Moreover, the staff disseminates the fruit of case experience and field studies in the form of memoranda and articles published by professional journals and general periodicals (R. 279, 287).

Fund raising for the support of its activities is limited to the solicitation of contributions; the principal fund raising activity consists of four quarterly mailings sent out by a group of volunteers called the Committee of One Hundred, but solicitations are also made at social affairs and public meetings sponsored by other volunteer groups for the benefit of the Fund (R. 51, 293, 295, 313). Contribu-

tions are its sole source of income since neither fees nor dues are requirements for Fund membership (R. 51, 294).

For four or five years prior to 1957, the Fund's income rose steadily; in 1956, it totaled $351,283.32 (R. 51, 294, 318). Beginning September 1956, due to the fact that the Fund's volunteer solicitors had to drop Texas from the list of states in which services and assistance were available—the state having restrained its operations during that time, income dropped off steadily (R. 68, 294-95). Another drop is reflected in the comparative income for the first eight months of 1957 and that for the same period in 1956: $152,000 and $246,000, respectively (R. 51, 68, 294), i.e., after the precariousness of Fund operations in Virginia was widely publicized (R. 68-69).

While studies by professional fund raising advisors reveal that the Fund's income from Virginia cannot be determined precisely because many Virginia contributors work in and mail their contributions from Washington, Fund income from Virginia to the extent that is shown on the books shows a decline from $6,256.19 in 1955 to $1,859.20 in 1956 to $424.00 for the first two-thirds of 1957 (R. 51, 295).

As to the Fund expenditures for services in Virginia, exclusive of the services and personal counsel contributed by the New York Staff in Virginia litigation (e.g., see R. 51, 318), the amounts are $6,344.39 in 1954, $6,000.00 in 1955, $6,490.00 in 1956 and $3,500.00 in 1957 for the first eight months (R. 296).

There is no dispute on the record as to the effect of the assailed statutes upon the operations of the Fund in Virginia, especially in the present atmosphere of fear and uneasiness: contributions have dwindled and would cease (R. 51, 68, 295, 296, 297-99) with a resulting cessation of contributions from the intransigent South (R. 297); many law-

yers, white as well as Negro, would not work for or with the Fund (R. 298, 322, 326, 330); and the Fund would be restrained from participating in civil rights litigation and utterly destroyed (R. 298-99).

It is on the basis of the foregoing facts, plus a consideration of companion enactments passed by the General Assembly of Virginia (R. 54-60, 131-32, 506 et seq.), that the District Court concluded (R. 61-62):

> In view of all the evidence, we find that the activities of the State authorities in support of the general plan to obstruct the integration of the races in schools in Virginia, of which plan the statutes in suit form an important part, brought about a loss of members and a reduction of the revenues of the [appellees] and made it more difficult to accomplish [their] legitimate aims.

Summary of Argument

Immediately after the 1954 decision in the *Brown* case, the Commonwealth of Virginia acting through its Governor and legislature set out to prevent compliance with that decision. Thus, Virginia embarked on its plan of "massive resistance", which included resolutions of "Interposition" and other attacks on this Court followed by the convening of the 1956 Extra Session of its General Assembly to consider recommendations "to continue our system of segregated public schools." The General Assembly responded by promptly adopting legislation (1) prohibiting use of public funds for integrated schools, closing of integrated schools and establishing a pupil assignment law; and (2) the statutes here complained of "as parts of the general plan of massive resistance to the integration of schools of the state under the Supreme Court's decrees."

The combined effect of the statutes in suit is to prevent Negroes in Virginia from effectively securing compliance with the *Brown* decision. In so doing, these statutes deny and curtail First Amendment rights of freedom of expression and other rights protected by the equal protection and due process clauses of the Fourteenth Amendment.

Chapters 31 and 32, requiring appellees to annually file membership lists and, if requested, to file lists of contributors as a prerequisite to continuing their activities, run afoul of the protections guaranteed by the Fourteenth Amendment. *National Association for the Advancement of Colored People* v. *Alabama*, 357 U. S. 449.

All three statutes deny free access to the courts, a right which has long been recognized and protected by the Constitution. *Terral* v. *Burke Construction Co.*, 257 U. S. 529.

While Chapters 31 and 32 seriously impair effective litigation by destroying the posibility of obtaining necessary funds, Chapters 32 and 35 go a step further and prevent lawyers from continuing to participate in group sponsored racial segregation cases. The prohibitions in these statutes apply to pending as well as future litigation to bring about compliance with this Court's decisions in racial segregation cases. Such state interference with these lawful practices denies liberty within the meaning of the Constitution. *Pierce* v. *Society of Sisters*, 268 U. S. 510; *Schware* v. *Board of Bar Examiners*, 353 U. S. 232.

Appellants have not and cannot show any overriding justification for state interference with lawful activities. Their claims that these statutes are necessary to preserve peace and order in regard to racial matters has long since been declared to be without constitutional significance. *Cooper* v. *Aaron*, 358 U. S. 1; *Buchanan* v. *Warley*, 245 U. S. 60.

The barratry statutes, while defended as expressions of the common law, are in fact in derogation thereof. *Thallheimer* v. *Brinckerhoff*, 3 Cow. 623, 15 Am. Dec. 308 (N. Y. Court of Errors 1824).

To an unprecedented degree in Chapter 35, and to a lesser degree in Chapters 31 and 32, Virginia deliberately excluded every conceivable group other than appellants from the restrictions of freedom of expression, enforcement of barratry provisions and other repressive measures. Such unwarranted classifications certainly deny equal protection. *Morey* v. *Doud*, 354 U. S. 457.

The District Court was not required by the doctrine of equitable abstention to postpone decision of the constitutional issues pending previous consideration of the statutes by the state courts. The cases did not present issues peculiar to the state's jurisprudence, or necessitate resolution of local law questions preliminary to consideration of the federal issues. The statutes are clear and unambiguous, and remission for definitive construction was unnecessary. *Chicago* v. *Atcheson, T. & S. F. R. Co.*, 357 U. S. 77; *Toomer* v. *Witsell*, 334 U. S. 385. There being no recognized policy that remission could serve, the District Court properly decided the issues here on appeal. *Meredith* v. *Winter Haven*, 320 U. S. 228; *Doud* v. *Hodge*, 350 U. S. 485.

Finally, whatever may be the rule as to enjoining enforcement of state criminal statutes in other circumstances, the District Court properly restrained appellants from enforcing Chapters 31, 32 and 35 under the circumstances shown in these cases. See *Truax* v. *Raich*, 239 U. S. 33; *Pierce* v. *Society of Sisters*, 268 U. S. 510; *Gayle* v. *Browder*, 352 U. S. 903, affirming 142 F. Supp. 707 (M. D. Ala. 1956).

ARGUMENT

I.

These Virginia statutes not only curtail lawful activities of two membership corporations and of their members, contributors, and attorneys, but also strike at basic civil rights and liberties guaranteed by the Constitution.

Chapters 31 and 32 violate rights secured to appellees, their members, contributors and attorneys, by the due process and equal protection clauses of the Fourteenth Amendment. Chapters 31 and 32 accomplish this by requiring disclosures, from the making of which appellees are constitutionally immune, as conditions precedent to the exercise of all of their major functions. Chapter 35 additionally operates to totally prohibit activities vital to their continued existence.

Chapter 31 provides that before appellees may solicit or expend funds to defray the expenses of civil rights litigation they must annually file with the State Corporation Commission a certified list of the names and addresses of their members and, if requested, the names and addresses of their contributors.

Chapter 32 requires registration and similar disclosures before either appellee may advocate compliance with the decision of this Court in the *Brown* case or raise or expend funds to aid in civil rights litigation toward that end, and before the appellee Association may promote or oppose legislation in behalf of any race or color.

Chapter 35 unqualifiedly prohibits either organization from paying any part or all of the expenses of litigation in which it is not personally or pecuniarly involved.

The effect of these laws is to abridge, not merely one, but each of several constitutional freedoms to which the appellees may justly lay claim. Each, in the exercise of its right of free speech, advocates the abolition of governmentally-imposed racial discrimination, by aiding litigation in the civil rights field as well as by more traditional media, and, in the case of the Association, by promoting legislation according to its views. They have for many years exercised a liberty, inherent in due process, by assisting others in their litigation to obtain protection from state abridgements of their federally-protected rights. In so doing, and by necessary exercise of their freedom of association, appellees, their members, contributors and others of a like mind have pooled their efforts and financial resources with a view to making possible the attainment of these objectives.

The legislative mandates of Chapters 31, 32 and 35 prohibit the appellees, and all persons affiliated with them, either absolutely, or on pain of disclosure of affiliation that due process renders inviolate, from taking collective action to effectively vindicate the constitutional principles they each espouse. And, this is sought to be accomplished by legislation so framed, not only as to leave similar group sponsored suasion and litigation activities free from regulation, but also to put the appellees "out of business by forbidding them to encourage and assist colored persons to assert rights established by the decisions" (R. 90).

A. *Compulsory Disclosure of Organizational Affiliates Where Economic Reprisals and Other Manifestations of Public Hostility Will Ensue Violates the Fourteenth Amendment.*

There can no longer be doubt as to the protection extended by the Fourteenth Amendment against "compelled disclosure of affiliation with groups engaged in advocacy." *National Association for the Advancement of Colored Peo-*

ple v. *Alabama*, 357 U. S. 449, 462. This Court there held invalid an Alabama court order similar to the membership disclosure requirements of Chapters 31 and 32, and said:

> Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly. . . . It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the "liberty" assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech. . . . Of course, it is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters, and state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny (at pp. 460-461).

These considerations apply with peculiar force to appellees—organizations which are media of expression for those who affiliate to oppose racial discrimination. In *Alabama*, this Court recognized "the vital relationship between freedom to associate and privacy in one's associations" (at p. 462) and stated:

> Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs.

There, this Court also held that:

> We think that the production order, in the respects here drawn in question, must be regarded as entailing the likelihood of a substantial restraint upon the exercise by petitioner's members of their right to freedom

> of association. Petitioner has made an uncontroverted showing that on past occasions revelation of the identity of its rank-and-file members has exposed these members to economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility. Under these circumstances, we think it apparent that compelled disclosure of petitioner's Alabama membership is likely to affect adversely the ability of petitioner and its members to pursue their collective effort to foster beliefs which they admittedly have the right to advocate, in that it may induce members to withdraw from the Association and dissuade others from joining it because of fear of exposure of their beliefs shown through their associations and of the consequences of this exposure (at pp. 462-463).

Similarly, in the cases at bar, the District Court found:

> [T]he Acts now before the court were passed as parts of the general plan of massive resistance to the integration of schools of the state under the Supreme Court's decrees. The agitation involved in the widespread discussion of the subject and the passage of the statutes by the Legislature have had a marked effect upon the public mind which has been reflected in hostility to the activities of the plaintiffs in these cases. This has been shown not only by the falling off of revenues, indicated above, but also by manifestations of ill will toward white and colored citizens who are known to be sympathetic with the aspirations of the colored people for equal treatment, particularly in the field of public education (R. 60-61).

and that the statutes will bring about the imposition of hostile sanctions on appellees' members:

> Registration of persons engaged in a popular cause imposes no hardship while, as the evidence in this case shows, registration of names of persons who resist the popular will would lead not only to expressions of ill will and hostility but to the loss of members by the plaintiff Association (R. 79).

Here, as in Alabama, the record falls short of demonstrating "a controlling justification for the deterrent effect on the free enjoyment of the right to associate" which the disclosures required by Chapters 31 and 32 will have. To support Chapter 32, appellants say that its purposes are "(1) to help in selection of deputies, and prevent deputizing a person participating actively in an organization agitating violence; (2) to identify certain known troublemakers as members of particular organization, and to thereby identify their leaders; (3) to keep a check on agitators from outside the community; (4) a list of the members of a local organization would apprise sheriffs of the possibilities of violence from such organization; and (5) a possible deterrent to persons against joining organizations under irresponsible leadership or engaged in unlawful activities" (Brief for Appellants, p. 58).

Chapter 31 is sought to be justified "as an aid to detect those persons who are engaged in barratry, maintenance, unauthorized practice of law and related offenses". (Brief for Appellants, p. 59).

Assuming *arguendo* that the above "justifications" represent the statutes' true purposes, and conceding the desirability of a state being able to detect law violators, and suppress racial conflicts or violence, nevertheless such ends may not be achieved by denying rights secured by the Constitution. *Cooper* v. *Aaron*, 358 U. S. 1; *Buchanan* v. *Warley*, 245 U. S. 60, 81. Furthermore the legislative history of

the statutes, as well as their explicit exemptions for all but those seeking racial equality before the law, casts the gravest doubt on whether these considerations are in fact the State's basis for having enacted the laws in question.

B. *Denial of Access to the Courts.*

As the court below found: "The legislative history of these statutes to which we now refer conclusively shows that they were passed to nullify as far as possible the effect of the decision of the Supreme Court in Brown v. Board of Education . . ." (R. 53). When these statutes were adopted there were several cases pending in federal courts in Virginia seeking compliance with the *Brown* decision (R. 82), including the *Prince Edward County Case* (one of the four cases consolidated in the *Brown* decision) (R. 82).

Each appellee is well known for its willingness to assist in litigation and to protect Negroes from unlawful racial discrimination (R. 82). Most of the money by which appellees are enabled to render charitable aid by defraying court costs (and, in the case of the Fund, providing legal assistance) is raised by public fund solicitation.

Chapters 31 and 32 require disclosure of membership lists, etc., as a prerequisite for such public solicitation as well as for such charitable aid. Chapter 35 expressly forbids such charitable assistance. What Chapter 35 does directly is also indirectly accomplished by Chapters 31 and 32. The three statutes together effectively block access to the courts by Negroes in Virginia who are desirous of securing judicial protection for their constitutional rights.

Unfettered access to the courts is the right of every citizen. *Terral* v. *Burke Construction Co.*, 257 U. S. 529. See *Truax* v. *Corrigan*, 257 U. S. 312, 334; *Barbier* v. *Connally*, 113 U. S. 27, 31; *Slaughter House Cases*, 16 Wall. 36; *Crandall* v. *Nevada*, 6 Wall. 36, 44. The primary right of Virginia

residents to resort to the federal courts to secure relief from state-imposed racial segregation stems from the Constitution itself (Article III, Section 2, Clause 1). Cases involving state enforced racial segregation arise under the Fourteenth Amendment to the Constitution and the civil rights statutes enacted by the Congress pursuant thereto, e.g., Title 42, United States Code, §§1971, 1981-83. And see, Title 28, United States Code, §1343(3).

Implied in this right of access to the federal courts is the right to assist and the right to accept assistance necessary to adequately present the issues to these courts.[2] The cases against state-imposed racial segregation are too costly for the average individual Negro litigant. Arrayed against such litigant is the state treasury, the attorney-general, his staff and an unlimited number of special assistants, as well as attorneys-general from other southern states anxious "to lend a hand in the fight against the NAACP" (R. 472). To leave the federal courts open to only those litigants individually able to finance such a case and the appeals involved is to effectively close the door to the great majority of aggrieved Negro citizens.

C. *Deprivation of Liberty.*

Although the Court has not assumed to define "liberty" with any great precision, that term is not confined to mere freedom from bodily restraint. Liberty

[2] As in the case of all other constitutional rights, powers, and duties, there are a number of rights which clearly arise by necessary implication, e.g., *Logan* v. *United States*, 144 U. S. 263, held that there was an implied duty on the part of the United States to protect prisoners in its custody against lawless violence (at 285); *United States* v. *Lancaster*, 44 Fed. 855, where the court upheld an indictment charging interference with the right to bring an action in the federal court. *Ex parte Yarbrough*, 110 U. S. 651, involving protection of federal elections from violence and corruption and *In re Neagle*, 135 U. S. 1, involving protection of federal judges in the exercise of their judicial function.

under law extends to the full range of conduct which the individual is free to pursue, and it cannot be restricted except for a proper governmental objective. *Bolling* v. *Sharpe*, 347 U. S. 497, 499-500.

The right to engage in lawful activities or to pursue a profession free from arbitrary governmental restraint is protected by the Constitution. Appellees' activities are aimed at the eradication of racial discrimination from public life in America through peaceful persuasion and the securing of rights guaranteed Negroes by the Constitution and laws of the United States by aiding these persons to obtain vindication thereof in the courts.

The lawyers who cooperate with appellees toward achievement of these aims are of course engaged in the pursuit of their professions. Cf. *Konigsberg* v. *State Bar of California*, 353 U. S. 252; *Schware* v. *Board of Bar Examiners of the State of New Mexico*, 353 U. S. 232; *Pierce* v. *Society of Sisters*, 268 U. S. 510; *Bartels* v. *Iowa*, 262 U. S. 404; *Meyers* v. *Nebraska*, 262 U. S. 390.

The destructive impact of Chapter 35 on the right of attorneys associated with appellees to practice their profession and of appellees to render charitable legal aid is clear. Lawyers who volunteer their professional services in cases which appellees support are restricted by the burdensome disclosure provisions of Chapters 31 and 32, and, far more serious, are subject to disbarment as well as original penalties under Chapter 35.

In addition, as the court below held, Chapter 35 violates the right of appellees and the lawyers associated with them without due process of law by its failure to take into account the well established rule that lawyers may volunteer their services to the poor and exploited, *Gunnels* v. *Atlanta Bar Association*, 191 Ga. 366, 12 S. E. 2d 602, even in

controversial causes, *In re Ades*, 6 F. Supp. 467, 475 (D. Md. 1934), when acting for benevolent purposes, and may act for charitable societies without violating the ethics of the profession (Canon 35, Canons of Professional Ethics, ABA). And as the court below found, "the activities of the plaintiff corporations are not undertaken for profit or for the promotion of ordinary business purposes, but, rather, for the securing of the rights of citizens without any possibility of financial aid." Their activities are also covered by Canon 35. Finally, the court below held that Chapter 35 violates due process "for it is designed to put the plaintiff corporations out of business by forbidding them to encourage and assist the colored persons to assert rights established by the decisions" of this court (R. 281, 298, 319).

D. *Virginia Has Shown No Justification for Chapter 35.*

Appellants' sole justification for Chapter 35 is "that the State is merely regulating the activities that have long been prohibited by the common law and condemned by the legal profession" (Appellants' Brief, p. 63). Unlike the statute in *McCloskey* v. *Tobin*, 252 U. S. 107, Chapter 35 is not simply a reaffirmation of a common law principle of wide acceptance. Rather, it is an undertaking to innovate upon the common law by introducing a prohibition of conduct heretofore considered valid.

Common law and statutory barratry contain two elements: (1) continuously stirring up groundless judicial proceedings; (2) doing so either for one's own profit or for the purpose of vexing the defendants.[3] Barratry, says one

[3] For common law definitions see Winfield, P. H., *The History of Conspiracy and Abuse of Legal Procedure* (Cambridge 1921), p. 200. For a typical statutory definition see Consolidated Laws of New York §320 "common barratry is the practice of exciting groundless judicial proceedings," and §322 "No person can be

writer, is closely related to maintenance; one common law definition holds it to be continuous maintenance.[4] Precise statutory definitions of maintenance as a separate offense are rare,[5] but at common law it was generally defined as the offense of officiously aiding another in his suit.[6] Champerty is said to be a species of maintenance.[7] Widely condemned by statute,[8] champerty is the offense of maintaining another's suit pursuant to agreement to receive part of the proceeds.[9]

Barratry, maintenance and champerty reached their zenith in England as a concomitant of the feudal system.

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convicted of common barratry except upon proof that he has excited actions or legal proceedings, in at least three instances, with a corrupt or malicious intent to vex and annoy." See also Arizona Revised Statutes (1956) §13-261; California Ann. Code 1954 §§158-159; Colorado Revised Statutes (1953) §40-7-40; Georgia Code Ann. (1935) §26-4701; Idaho Code Ann. (1940) §18-1001; Illinois Statutes Ann. Chapter 38, §65; Montana Revised Code (1947) §94-3533-34; Nevada Revised Statutes (1957) §199.320; New Mexico Statutes (1953) Chapter 40-26-1; North Dakota Revised Code (1943) Chapter 12-1716 and 1717; Oklahoma Statutes Ann. (1937) Title 21, §§550 and 552; Pennsylvania Statutes Ann. (1945) Title 18, §4306.

[4] Radin, Max, "Maintenance by Champerty," 24 California Law Review 48, 64 (1935).

[5] See Illinois Statutes Annotated, Ch. 38, §66 and Colorado Revised Statutes (1953) §40-7-41.

[6] Winfield, P. H., "The History of Maintenance and Champerty," 35 Law Quarterly Rev. 50, 56 (1919).

[7] Winfield, op. cit., supra, ftn. 3, at 131, 140.

[8] Ala. Code (1940) Title 16, §53; Del. Code Annotated (1953) 11 §371; Kentucky Revised Statutes Annotated. (1955) §§372.060, 372.080, 372.110; Maine Revised Statutes (1954) C. 135, §18; Michigan Statutes Annotated (1937) §27.94; New Jersey Statutes Annotated (1952) 2A:170-83; N. Y. Penal Law §274; Oklahoma Statutes Annotated (1937) Title 21, §§547, 548, 554, 558, 562-564; Tennessee Code Annotated (1956) 64-406, 64-407; Utah Code Annotated (1953) §78-51-27; Virginia Code (1950) §54-70.

[9] Winfield, op. cit., supra, ftn. 3, at 131.

The evil consisted primarily of "support given by a feudal magnate to his retainers in all their suits, without any reference to their justification." [10] "This type of support became in fact one of the means by which powerful men aggrandized their estates and the background was unquestionably that of private war." [11]. The need for heavy criminal sanctions ceased with the decline of feudalism.[12] Consequently, although barratry and champerty remain on the books, convictions nowadays are rare.[13]

The common law soon recognized exceptions to maintenance, *Thallheimer* v. *Brinckerhoff*, 3 Cow. 623, 15 Am. Dec. 308 (New York Court of Errors 1824) noted these exceptions:

> . . . consanquinity or affinity between the suitor and him who gives aid to the suit . . . relation of landlord and tenant, that of master and servant, *acts of charity to the poor and the exercise of the legal profession*, . . . (Emphasis added.)

> [The laws] were intended to prevent the interference of strangers having no pretense of right in the subjects of the suit, and standing in no relation of duty to the suitor . . . to prevent traffic in doubtful claims, and to operate upon buyers of pretended rights, who had no relation to the suitor or the subject, otherwise than as purchasers of the profits of litigation (at 647-648).

See also, *Brush* v. *Carbondale*, 299 Ill. 144, 82 N. E. 252 (1907).

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[10] Radin, supra, ftn. 4, at 64.

[11] Ibid.

[12] Ibid.

[13] Id. at 67.

With the development of a mercantile society, champerty has been modified to permit contingent free arrangements, etc.[14]

Statutory barratry remains essentially as set forth above, but an exception has developed: ". . . the offense of barratry does not consist in promoting either private suits or public prosecutions when the sole object is the attainment of public justice or private rights, but on the prostitution of these remedies to mean and selfish purposes." [15] See also *Gunnels* v. *Atlanta Bar Assn.*, 191 Ga. 336, 12 S. E. 2d 602 (1940).

Disregarding the basic elements of barratry and the well established exceptions thereto, Virginia, under the guise of protecting the administration of justice, now defines barratry in such a way as to put appellees out of business.[16] Virginia's definition of barratry seems never to have appeared before, and individual or group financing of litigation founded on bona fide charitable motives seems never to have been condemned in the past.

Because of the severity of the opposition of states officially resisting desegregation Negro citizens must act collectively to secure their constitutional rights. No individual Negro can effectively pit his strength against the organized resistance of state governments. Consequently, the challenge to state-enforced racial segregation is being made on a group basis. In view of this, civil rights cases

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[14] Id. at 68.

[15] 139 A. L. R. 622-623, quoted in 10 Am. Jur., Champerty and Maintenance, §3, p. 551 (1956) (Supp. p. 53 "add, following note 19").

[16] Chapter 35, Acts of Special Session, General Assembly of Virginia, 1956, does not make, as essential elements of the crime of barratry, stirring up (1) groundless suits (2) for one's own profit or for the purpose of vexing the defendant.

have become group-sponsored litigation—an American free speech phenomenon.[17]

Group sponsorship of litigation is as indigenous to twentieth century America as group sponsorship of welfare and charities. Groups which engage in such activity are too numerous to mention individually. However, they may be placed in the following general classifications: labor unions,[18] trade associations,[19] consumer organizations,[20] nationality groups,[21] bar associations,[22] racial groups,[23]

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[17] Cf. *Thornhill* v. *Alabama*, 310 U. S. 88.

[18] E.g., the following publications describe cases in which labor unions supplied counsel or funds for members involved in litigation: See reprint of testimony of Walter Drew before Senate Judiciary Committee (1914) in "The Crime of the Century and Its Relation to Politics", p. 24 (Nat'l Assn. of Manufacturers publication); *News You Don't Get*, August 11, 1936, April 27 and May 5, 1938 (published by National Committee for the Defense of Political Prisoners), pages unnumbered; Church, S. H., "Trade Unionism and Crime," *New York Times*, Oct. 1, 1922.

[19] E.g., The National Erector's Association retained Walter Drew to represent it in litigation. See reprint referred to in note 17, supra. It is virtually impossible to document the fact that trade associations support litigation involving the applicability and constitutionality of laws affecting the trade since the reports of the cases do not give such information. *Brannon* v. *Stark*, 185 F. 2d 871 (D. C. Cir. 1950).

[20] E.g., The Consumer's League sponsored litigation involving the constitutionality of social welfare legislation in the 1930's. Schlesinger, A. M., *Crisis of the Old Order* (1957) pp. 113 and 419.

[21] E.g., between 1856 and 1875 the German Society provided a special legal committee to protect newly arrived immigrants. Smith, R. H., *Justice and the Poor* (1921) p. 134, American Committee for the Defense of Puerto Rican Political Prisoners. *News You Don't Get*, May 7, 1935, pages unnumbered, op. cit., supra, ftn. 18.

[22] E.g., The Atlanta Bar Association in the 1940's sponsored litigation for persons who had been victims of unscrupulous money loaning businesses. *Gunnels* v. *Atlanta Bar Association*, 191 Ga. 366, 12 S. E. 2d 602 (1940).

[23] See *New York Times* feature article "Champion of the Indian," March 3, 1958.

religious groups,[24] labor defense committees,[25] child welfare organizations,[26] civil liberties groups,[27] property owners,[28] tenants,[29] professional groups,[30] committees for protection of immigrants,[31] and hoc committees[32].

It appears that no court in the United States has ever denied the right of individual or group sponsorship of litigation as involved here where there is no agreement to share the proceeds and where the members of the group have a common or general or patriotic interest in the principle of law to be established. Indeed, the courts have expressly upheld it. *Brannon* v. *Stark*, 185 F. 2d 871 (D. C. Cir. 1950), aff'd 342 U. S. 451; *Gunnels* v. *Atlanta Bar Assn.*, 191 Ga. 366, 12 S. E. 2d 602 (1940); *Brush* v. *Car-*

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[24] E.g., Jehovah's Witnesses apparently sponsored a number of cases in this Court, e.g., *Marsh* v. *Alabama*, 326 U. S. 501, and *Cantwell* v. *Connecticut*, 310 U. S. 296. The Methodist Federation for Social Service provided financial assistance in the Scottsboro case. *News You Don't Get*, Jan. 3, 1936, pages unnumbered, op. cit., supra, ftn. 18.

[25] International Labor Defense sponsored cases as evidenced by *In re Ades*, 6 F. Supp. 467 (D. Md. 1934).

[26] E.g., The Children's Aid Society of Boston, Smith R. H., Justice and the Poor (1921) p. 223.

[27] E.g.,The American Civil Liberties Union. See the annual reports of this organization for any year.

[28] E.g., *Opinions of the Committees on Professional Ethics of the Association of the Bar of the City of New York and the New York County Lawyers' Association*, Columbia Univ. Press, 1956, Op. No. 113. *Hurd* v. *Hodge*, 334 U. S. 24.

[29] E.g., *Shanks Village Committee Against Rent Increases* v. *Cary*, 103 F. Supp. 566 (S. D. N. Y. 1952).

[30] E.g., *Alston* v. *School Board of the City of Norfolk*, 112 F. 2d 992 (4th Cir. 1940).

[31] E.g., American Committee for the Protection of the Foreign Born assisted Otto Richter, a German refugee seeking political asylum. *News You Don't Get*, Feb. 25, 1935, pages unnumbered, op. cit., supra, ftn. 18.

[32] E.g., Sacco-Vanzetti Defense Committee, Schlesinger, A. M., *Crisis of the Old Order*, 1957, p. 113.

bondale, 299 Ill. 144, 82 N. E. 252 (1907); *Davies* v. *Stowell*, 78 Wis. 334, 47 N. W. 370; *Royal Oak Drain. Dist.* v. *Keefe*, 87 F. 2d 786 (6th Cir. 1937); *Vita-phone Corp.* v. *Hutchison Amusement Co.*, 28 F. Supp. 526 (D. Mass. 1939). *In re Ades*, 6 F. Supp. 467 (D. Md. 1934).[33] Moreover, a species of such cooperative activity has been approved by bar associations. The Committee on Professional Ethics of the Association of the Bar of the City of New York says: "A litigant may solicit the cooperation of persons interested in the same question, or in establishing the same principle of law; and such solicitation may properly be done by his attorney, when it is primarily and fundamentally in the interest of the client . . ."[34] And the same committee says: "under proper circumstances and where real interests are involved, lawyers may act for one party where legal fees and other expenses are defrayed by another."[35]

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[33] *Brannon* v. *Stark*, supra, upheld the right of certain handlers of milk to finance the litigation of certain milk producers. *Gunnels* v. *Atlanta Bar Assn.*, supra, upheld the right of the Atlanta Bar Association to furnish counsel for the litigation of those who had been victims of the loan sharks. *Brush* v. *Carbondale* upheld the right of a citizen to finance an appeal by the city in a test case. *Davis* v. *Stowell* upheld the right of buyers of worthless stock to prosecute a test case brought by plaintiff to determine defendant's case. *Royal Oak Drain. Dist.* v. *Keefe* upheld the right of a bondholders' protective committee to bring a class suit to determine validity of bonds. *Vitasphone Corp.* v. *Hutchison* upheld the maintenance of a copyright protection bureau by a group of movie producers and distributors to protect their copyrights by bringing suit where necessary. *In re Ades* upheld the right of a lawyer, who had been employed by the International Labor Defense, a group which sponsored litigation, to volunteer his services to persons accused of crimes.

[34] *Opinions of the Committees on Professional Ethics of the Association of the Bar of the City of New York and the New York County Lawyers' Association, Columbia University Press*, 1956, Opinion No. 343. See also Nos. 113, 170, 281, 321, 363, and 586.

[35] Id, Op. No. 707. In this instance the expense bearer was merely interested in a final determination of the question of law as he might have a similar case in the future.

The Canons of Professional Ethics of the American Bar Association expressly recognize the activities of charitable societies in paying the expenses of the litigation of others. Canon 35. See also, Opinions of ABA Committee on Professional Ethics and Grievances, Opinion 148 (1935).

The development of the law has always been toward expanding the opportunities of litigants to present their cases as fully and completely as justice may require and to avail themselves of whatever assistance they need in their presentation.[36] There has been continued liberalization of rules of procedure which has facilitated the development of group sponsored litigation, e.g., rules permitting class actions, intervention and permissive joinder. Recognizing that large groups of people are often interested in a determination of common questions of law and fact, the Federal Rules of Civil Procedure permit one member of the group to sue on behalf of all.[37] If Virginia fears that its courts will become overburdened with frivolous contentions, it has only to look to the admonition of this Court: "The expenses of litigation deter frivolous contentions. If numerous parallel cases are filed, the courts have ample authority to stay useless litigation until the determination of a test case." *Stark* v. *Wickard*, 321 U. S. 288, 310.

Virginia now seeks to reverse this trend by prohibiting certain activity with respect to the conduct of litigation which is the antithesis of this development and which has the singular effect, in the circumstances of this case, of divesting indigent Negro litigants of their only means of

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[36] Brownell, Emery, *Legal Aid in the United States* (1951); Smith, R. H., *Justice and the Poor* (1921).

[37] Rule 23(a)(3) F. R. C. P. See also *Opinions of the Committee on Professional Ethics*, etc., op. cit., supra, ftn. 35, Op. No. 113 where the Bar Association's Committee on Professional Ethics affirmed the right of an attorney to ask each member of the group to contribute to the payment of his fee.

access to the courts. Virginia can hardly claim that this anomaly constitutes due process in that it merely codifies existing law or custom of the bar.

Virginia's real purpose in prohibiting contributions to litigation is not to safeguard the administration of justice, but to erect an economic barrier to the courts on questions of racial discrimination. The exemptions contained in Chapter 35 support this assertion.

E. *Denial of Equal Protection.*

The Virginia legislature, recognizing the sweep of these statutes and the wide variety of situations in which group sponsorship is a necessary ingredient, has endeavored to exempt from their operation every conceivable type of group sponsored activity which does not involve a state imposed color restriction.

Although Chapter 35 would totally prohibit either appellee from in any way assisting the litigation of others, it provides an exemption from its prohibitions broad to the extent that all other group-sponsored litigation activities remain lawful:

> This act shall not be applicable to attorneys who are parties to contingent fee contracts with their clients where the attorney does not protect the client from payment of the costs and expenses of litigation, nor shall this act apply to any matter involving annexation, zoning, bond issues, or the holding or results of any election or referendum, nor shall this act apply to suits pertaining to or affecting possession of or title to real or personal property, regardless of ownership, nor shall this act apply to suits involving the legality of assessment or collection of taxes or the rates thereof, nor shall this act apply to suits involving rates or charges or services by common carriers

> or public utilities, nor shall this act apply to criminal prosecutions, nor to the payment of attorneys by legal aid societies approved by the Virginia State Bar, nor to proceedings to abate nuisances. Nothing herein shall be construed to be in derogation of the constitutional rights of real parties in interest to employ counsel or to prosecute any available legal remedy under the laws of this State (Section 1 (f)).

In similar vein, while Chapter 32 undertakes to prohibit either organization from advocating racial integration, and from raising or expending funds for use in civil rights litigation, and would prohibit appellee Association from promoting or opposing racial legislation, it similarly contains broad exemptions from its operation:

> This act shall not apply to persons, firms, partnerships, corporations or associations who or which carry on such activity or business solely through the medium of newspapers, periodicals, magazines or other like means which are or may be admitted under United States postal regulations as second-class mail matter in the United States mails as defined in Title 39, §224, United States Code Annotated, and/or through radio, television or facsimile broadcast or wire service operations. This act shall also not apply to any person, firm, partnership, corporation, association, organization or candidate in any political election campaign, or to any committee, association, organization or group of persons acting together because of activities connected with any political campaign (Section 9).[38]

[38] While the language in Chapter 32 attempts to place the disclosure requirement on persons who support segregation as well as those who oppose it, such a requirement is transparent and of no legal significance. "Equal protection of the laws is not achieved through the indiscriminate imposition of inequalities." *Shelley* v. *Kraemer*, 334 U. S. 1, 22.

Likewise, Chapter 31 applies only to a person or organization soliciting or expending funds to assist litigation in which the person or organization is neither personally nor pecuniarily interested or involved, and is not applicable to any other kind of solicitation or any other kind of expenditure of funds. Section 2. The record in this case establishes that civil rights litigation in Virginia is usually by group sponsorship and that the appellees are the only organizations engaged as a major activity in soliciting or expending funds to support such activities (R. 93).

More than 70 years ago this Court declared that the equal protection of the laws is "a pledge of the protection of equal laws." *Yick Wo* v. *Hopkins*, 118 U. S. 356, 369. State statutory classifications violate the equal protection clause if based upon nonexistent differences or if the differences are not reasonably related to a proper legislative objective. *Morey* v. *Doud*, 354 U. S. 457; *Skinner* v. *Oklahoma*, 316 U. S. 535; *Hartford Steam Boiler Inspection & Insurance Co.* v. *Harrison*, 301 U. S. 459; *Mayflower Farms* v. *Ten Eyck*, 297 U. S. 266; *Concordia Fire Insurance Co.* v. *Illinois*, 292 U. S. 535; *Smith* v. *Cahoon*, 283 U. S. 553; *Nixon* v. *Herndon*, 273 U. S. 536; *Air-Way Electric Appliance Corp.* v. *Day*, 266 U. S. 71; *Truax* v. *Raich*, 239 U. S. 33; *Southern Railway Co.* v. *Greene*, 216 U. S. 400. Discriminations of the character outlawed by the equal protection provision are epitomized in the legislation under consideration. It operates to create a class embracing only the appellees, their members and associates, and leaves all others free to carry on to pursue the same character of activities. While the state's alleged objective is to safeguard the administration of justice, it is obvious that the discrimination in favor of all groups except the two whose similar activities concern only the advancement of minority rights cannot meet the test of the Constitution.

The three-part statutory scheme places appellees in an insoluble dilemma: They may refuse to comply with the disclosure requirements, but will then be forced to operate under the cloud of criminal and injunctive frustration of their activities; at the same time the statutes' mere existence will deter persons from joining them. On the other hand, appellees may register their associates' names and addresses, thereby identifying their personal "political" beliefs and subjecting them to "barratry" prosecutions. Either way, the constitutional rights of appellees, their members, and their associates become a nullity. "Massive resistance" thereby becomes a legal reality.

II.

There were no legally sufficient reasons to deny appellees injunctive relief or postpone action in deference to the state courts.

A. *The District Court Properly Enjoined Enforcement of the Statutes Without Their Previous Consideration by the State Courts.*

The District Court was plainly right in deciding the constitutional issues presented by Chapters 31, 32 and 35 without prior treatment of those statutes by the Virginia courts.

This position is unaffected by the doctrine of equitable abstention, recently restated in *Meridian* v. *Southern Bell T. & T. Co.*, 27 U. S. L. Week 3235 (February 24, 1959), that

> Proper exercise of federal jurisdiction requires that controversies involving unsettled questions of state law be decided in the state tribunals preliminary to a federal court's consideration of the underlying federal constitutional questions.

Properly applied, this principle undoubtedly promotes considerations of the highest order. As this Court declared in *Government and Civic Employees Organizing Committee* v. *Windsor*, 353 U. S. 364, 366,

> One policy served by that practice is that of not passing on constitutional questions in situations where an authoritative interpretation of state law may avoid the constitutional issues. . . . Another policy served by that practice is the avoidance of the adjudication of abstract, hypothetical issues. Federal courts will not pass upon constitutional contentions presented in an abstract rather than in a concrete form.

But these underlying policies at once define both the scope given the doctrine and the limitations imposed upon its use. While it appropriately finds expression when applied in furtherance of the policies it is designed to serve, its operation, by the same token, is confined to situations justifying its existence. See *Propper* v. *Clark*, 337 U. S. 472; *Meredith* v. *Winter Haven*, 320 U. S. 228. And appellees' position, in sum, is that the cases at bar did not present issues demanding or justifying anterior local determinations, and that the District Court did not abuse its discretion by deciding the constitutional questions.

Unlike *Burford* v. *Sun Oil Company*, 319 U. S. 315, and *Pennsylvania* v. *Williams*, 294 U. S. 176, the District Court was not called upon to address itself to "a specialized aspect of a complicated system of local law outside the normal competence of a federal court," *Alabama Public Service Commission* v. *Southern Ry.*, 341 U. S. 341, 360 (concurring opinion). The complaints addressed the Court to a consideration of the limitations imposed upon the state's legislative power by the due process and equal protection clauses of the Fourteenth Amendment and implementing Civil Rights Acts, 42 U. S. C. §§1981, 1983. They presented is-

sues, well within the recognized talents of federal judges, which the district courts by explicit legislation are peculiarly endowed to entertain, 28 U. S. C. §§1331, 1343. As the District Court stated:

> It must be remembered, however, that Congress has not seen fit to restrict the jurisdiction of the district courts by imposing as a condition precedent to action by the federal courts, the judicial pronouncement by the state court in cases where the constitutionality of a state statute is presented and injunctive relief is requested. Concurrent jurisdiction still exists until modified in the wisdom of the legislative branch of our government (R. 73).

And as this Court in *Propper* v. *Clark*, 337 U. S. 472, 492, was careful to point out:

> The submission of special issues is a useful device in judicial administration in such circumstances as existed in the . . . *Spector* Case [*Spector Motor Service* v. *McLaughlin*, 323 U. S. 101] . . . and the *Pullman* Case [*Railroad Commission of Texas* v. *Pullman Co.*, 312 U. S. 496] . . . but in the absence of special circumstances . . . it is not to be used to impede the normal course of action where federal courts have been granted jurisdiction of the controversy.

These cases did not encounter problems in local law to be preliminarily resolved before the constitutional questions were reached. Cf. *Meridian* v. *Southern Bell T. & T. Co.*, 27 U. S. L. Week 3235; *American Federation of Labor* v. *Watson*, 327 U. S. 582; *Spector Motor Service* v. *McLaughlin*, 323 U. S. 101; *Railroad Commission of Texas* v. *Pullman Company*, 312 U. S. 496; *Alabama Public Service Commission* v. *Southern Railroad Company*, 341 U. S. 341. Unlike *American Federation of Labor* v. *Watson*, supra,

the District Court was not faced with preliminary question as to whether the legislation was self-executing, or, as in *Meridian* v. *Southern Bell T. & T. Co.*, supra, *Railroad Commission of Texas* v. *Pullman Company* and *Alabama Public Service Commission* v. *Southern Railroad Company*, supra, as to whether, in terms of state law, the action complained of was authorized. The issues before it were not "intertwined with preliminary doubts about local law," nor was the court called upon to decide "questions of constitutionality on the basis of preliminary guesses regarding local law." *Spector Motor Service* v. *McLaughlin*, supra, 323 U. S. at 105. Consideration of the statutes here involved did not in any way necessitate "a tentative answer which may be displaced tomorrow by a state adjudication." *Railroad Commission of Texas* v. *Pullman Company*, supra, 312 U. S. at 500.

Nor could constitutional adjudication be aided by a definitive construction of the statutes involved. The only adjudication sought or made by the District Court was the constitutional validity of the laws in question in their application to the complaining organizations, and the only claim of ambiguity advanced by appellants (Brief, pp. 37-40) is as to whether they did so apply. The language of these statutes creates no uncertainty as to their requirements or their prohibitions, or as to whom they are directed.

Compliance with Chapter 31 explicitly demands information, which appellees assert is constitutionally protected against disclosure, of every "person" soliciting or expending funds to support litigation "unless such person is a party" or "has a pecuniary right or liability therein" (§2).[39]

[39] Chapter 31, §2 provides that "No person shall engage in the solicitation of funds from the public or any segment thereof when such funds will be used in whole or in part to commence or to prosecute further any original proceeding, unless such person is a party or unless he has a pecuniary right or liability therein, nor

"Person" is defined as meaning "any . . . corporation or association, whether formally or informally organized" (§1). We see no uncertainty in this language, and it was clear from the evidence that both appellees regularly solicit and expend funds for litigation to which neither is a party and in which neither has a pecuniary right or liability.

The application of Chapter 32 is equally clear. It undertakes to require registration by, and information which appellees claim to be constitutionally immune from supplying, of "every . . . corporation or association . . . which engages as one of its principal functions or activities in the promoting or opposing in any manner the passage of legislation by the General Assembly in behalf of any race or color," or "which has as one of its principal functions or activities the advocating of racial integration or segregation" or "which is engaged or engages in raising or expending funds for the employment of counsel or payment of costs in connection with litigation in behalf of any race or color in this state" (§2).[40] Again, we see nothing ambiguous

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shall any person expend funds from whatever source received to commence or to prosecute further any original proceeding, unless such person is a party or has a pecuniary right or liability therein, until any person shall first" comply with the disclosure requirements set forth therein.

[40] §2. Every person, firm, partnership, corporation or association, whether by or through its agents, servants, employees, officers, or voluntary workers or associates, who or which engages as one of its principal functions or activities in the promoting or opposing in any manner the passage of legislation by the General Assembly in behalf of any race or color, or who or which has as one of its principal functions or activities the advocating of racial integration or segregation or whose activities cause or tend to cause racial conflicts or violence, or who or which is engaged or engages in raising or expending funds for the employment of counsel or payment of costs in connection with litigation in behalf of any race or color in this State, shall, within sixty days after the effective date of this act and annually within sixty days following the first of each year thereafter, cause his or its name to be registered with

in the language of this statute in terms of application to the appellees, or of its prohibition when its demands are not satisfied.

Similarly, Chapter 35 clearly applies to the appellees and prohibits their activities in support of litigation. These are accomplished by meticulous phrasing of the definitions and components of the "barratry" it undertakes to proscribe.[41] "Barratry" is "the offense of stirring up litiga-

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the clerk of the State Corporation Commission, as hereinafter provided; provided that in the case of any person, firm, partnership, corporation, association or organization, whose activities have not been of such nature as to require it to register under this act, such person, firm, partnership, corporation, association or organization, within sixty days following the date on which he or it engages in any activity making registration under this act applicable, shall cause his or its name to be registered with the clerk of the State Corporation Commission, as hereinafter provided; and provided, further, that nothing herein shall apply to the right of the people peaceably to assemble and to petition the government for a redress of grievances, or to an individual freely speaking or publishing on his own behalf in the expression of his opinion and engaging in no other activity subject to the provisions hereof and not acting in concert with other persons.

[41] §1. Definitions.

(a) "Barratry" is the offense of stirring up litigation.

(b) A "barrator" is an individual, partnership, association or corporation who or which stirs up litigation.

(c) "Stirring up litigation" means instigating or attempting to instigate a person or persons to institute a suit at law or equity.

(d) "Instigating" means bringing it about that all or part of the expenses of the litigation are paid by the barrator or by a person or persons (other than the plaintiffs) acting in concert with the barrator, unless the instigation is justified.

(e) "Justified" means that the instigator is related by blood or marriage to the plaintiff whom he instigates, or that the instigator is entitled by law to share with the plaintiff in money or property that is the subject of the litigation or that the instigator has a direct interest in the subject matter of the litigation or occupies a position of trust in relation to the plaintiff; or that the instigator is acting on behalf of a duly constituted legal aid society approved by the Virginia State Bar which offers advice or assistance in all kinds of legal matters to all members of the public who come to it

tion" which, in turn, means "instigating or attempting to instigate a person or persons to institute a suit at law or equity" (§1c). "Instigating" means "bringing it about that all or part of the expenses of the litigation are paid by the barrator or by a person or persons (other than the plaintiffs) acting in concert with the barrator, unless the instigation is justified" (§1d). "Justified" is given a definition which by no process of construction could exempt appellees from the operation of the act. We see no need for, or possibility of, refinement of these exacting definitions by process of "construction" by a state court.

These cases did not present a situation where decision of the constitutional questions could be avoided or aided by state court interpretation of the legislation in question. Cf. *Albertson* v. *Millard*, 345 U. S. 242; *Chicago* v. *Fieldcrest Dairies*, 316 U. S. 168; *Government and Civic Employees Organizing Committee* v. *Windsor*, 353 U. S. 364; *Spector Motor Service* v. *McLaughlin*, 323 U. S. 101. The propriety of remission for state court construction is limited by the need for interpretation as a firm predicate for constitutional determination, or as a possibility of avoiding such determination, and the rule applied in these cases has no legitimate operation where, as here, the applicability, scope and impact of the statutes are clear. *Chicago* v. *Atchison, T. & S. F. R. Company*, 357 U. S. 77; *Public Utilities Commission* v. *United States*, 355 U. S. 534; *Toomer* v. *Witsell*, 334 U. S. 385; *Bryan* v. *Austin*, 148 F. Supp. 563, 567-568 (E. D. S. C. 1957, dissenting opinion), vacated as moot 354 U. S. 933. See also *General Box Company* v. *United States*, 351 U. S. 159; *Morey* v. *Dowd*, 354 U. S. 457. Consequently, in *Chi-*

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for advice or assistance and are unable because of poverty to pay legal fees.

(f) "Direct interest" means a personal right or a pecuniary right or liability.

cago v. *Atchison, T. & S. F. R. Co.*, supra, the majority of this Court declined to apply the abstention doctrine where it saw "no ambiguity in the section which calls for interpretation by the state courts," and pointed out that "remission to those courts would involve substantial delay and expense, and the chance of a result different from that reached below, on the issue of applicability, would be slight" (357 U. S. at 84). Likewise, in *Toomer* v. *Witsell*, supra, this Court disposed of constitutional issues where there was "neither need for interpretation of the statutes nor any other special circumstance requiring the federal courts to stay action pending proceedings in the State courts" (334 U. S. at 392, ftn.). The late Judge John J. Parker, in *Bryan* v. *Austin*, supra, delineated this principle in the following language:

> I recognize, of course, that, in the application of the rule of comity, a federal court should stay action pending action by the courts of the state, where it is called upon to enjoin the enforcement of a state statute which has not been interpreted by the state courts, and where the statute is susceptible of an interpretation which would avoid constitutional invalidity. As the federal courts are bound by the interpretation placed by the highest court of a state upon a statute of that state, they should not enjoin the enforcement of a statute as violative of the Constitution in advance of such an interpretation, if it is reasonably possible for the statute to be given an interpretation which will render it constitutional . . . . The rule as to stay of proceedings pending interpretation of a state statute by the Courts of the state can have no application to a case, such as we have here, where the meaning of the statute is perfectly clear and where no interpretation which could possibly be placed upon it by the Supreme Court of the state could render it constitutional.

The District Court was fully reverent to the admonition of this Court that "federal courts should avoid passing on constitutional questions in situations where an authoritative interpretation of state law may avoid the constitutional issues" (R. 70-71). It also recognized that it was free to pass upon the constitutional questions "if the state statutes at issue are free from doubt or ambiguity" (R. 72). It felt that this Court "has endeavored to grant cautious discretion to district courts in determining whether jurisdiction should be exercised and the matter considered on its merits, as contrasted with the acceptance of jurisdiction as such" (R. 73). And it concluded, rightly we submit, that the circumstances of the case did not warrant the application of the doctrine of absention:

> We are advised that Virginia is not alone in enacting legislation seriously impeding the activities of the plaintiff corporations through the passage of similar laws (43 Va. L. Rev. 1241). As heretofore noted, the problem for determination is essentially a federal question with no peculiarities of local law. Where the statute is free from ambiguity and there remains no reasonable interpretation which will render it constitutional, there are compelling reasons to bring about an expeditious and final ascertainment of the constitutionality of these statutes to the end that a multiplicity of similar actions may, if possible, be avoided (R. 73).

We do not understand, as appellants contend (Brief, pp. 29-37), that the District Court felt that stay of the proceedings before it would be in order *only* if the statutes in question were ambiguous. On the contrary, it stated that it should abstain "where an authoritative interpretation of state law may avoid the constitutional issues" (R. 70-71), and that there might be occasion to do so either because "the interpretation of a state statute is doubtful" (R. 71),

r "a question of law remains undecided" (R. 71), or be-
ause of "the necessity of maintaining the delicate balance
etween state and federal courts under the concept of
eparate sovereigns" (R. 72), or because of circumstances
requiring special competency in interpretation of local
aw" (R. 72). We submit that the District Court considered
he full range of possibilities of state court remission under
he decisional doctrine of this Court.

Nor do we understand, as appellants urge (Brief, pp. 37-
8), that the District Court undertook to interpret the
tatutes in suit, or felt that it needed to do so. It was care-
ul to point out[42] that it examined the legislative history of
hese statutes (R. 53-60) merely to ascertain "legislative
urpose" which, in its view, is "of primary importance in
etermining the propriety of legislative action" (R. 60),
nd it concluded that this examination, which it denominated
a study of legislative purpose" (R. 60), "conclusively
hows that they were passed to nullify as far as possible
he effect of the decision of the Supreme Court in *Brown*

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[42] While it is well settled that a court may not inquire into
he legislative motive (*Tenney* v. *Brandhove*, 341 U. S. 367, 377),
is equally well settled that a Court may inquire into the legisla-
ve purpose. (See *Baskin* v. *Brown*, 4 Cir., 174 F. 2d 391, 392-393,
nd *Davis* v. *Schnell*, 81 F. Supp. 872, 878-880, aff'd 336 U. S. 933,
which state efforts to disenfranchise Negroes were struck down
s violative of the Fifteenth Amendment.) Legislative motive—
ood or bad—is irrelevant to the process of judicial review; but
gislative purpose is of primary importance in determining the
ropriety of legislative action, since the purpose itself must be
ithin the legislative competence, and the methods used must be
easonably likely to accomplish that purpose. Because of this neces-
ty, a study of legislative purpose is of the highest relevance when
claim of unconstitutionality is put forward. Usually a court looks
to the legislative history to clear up some statutory ambiguity,
s in *Davis* v. *Schnell*, 81 F. Supp. at 878; but such ambiguity is
ot the *sine qua non* for a judicial inquiry into legislative history.
ee the decision in *Lane* v. *Wilson*, 307 U. S. 268, in which the
upreme Court showed that the state statute before the court was
erely an attempt to avoid a previous decision in which the
grandfather" clause of an earlier statute had been held void.

v. *Board of Education*, 347 U. S. 483 and 349 U. S. 294" (R. 53). "Usually a court looks into legislative history to clear up some statutory ambiguity," it said, "but such ambiguity is not the *sine qua non* for a judicial inquiry into legislative history" (R. 60). And when it measured the statutes by constitutional requirements, it addressed itself to their plain language, it concluded that "the two registration statutes, Chapters 31 and 32, are free from ambiguities which require a prior interpretation by the courts of the state" (R. 73-74) and that "Chapter 35 . . . contains a carefully phrased definition of the crime of barratry and is free from ambiguity" (R. 85). We do not find here a resort to legislative background as a means of resolving doubt as to what these laws were intended to accomplish.

Appellants' real position seems to be fairly summarized in the following statement:

> A federal court of equity should not decide that a state statute is constitutional or unconstitutional until definite determinations have been made by a state court. This is true though the provisions of such statutes appear to be free of doubt or ambiguity. (Appellants' Brief, p. 30.)

If by this statement appellants mean that a federal court should not undertake to pass upon the constitutionality of a statute until it has first been edited by a state court, the contention is doomed to failure. *Doud* v. *Hodge*, 350 U. S. 485; *Chicago* v. *Atchison, T. & S. F. R. Company*, 357 U. S. 77; *Public Utilities Commission* v. *United States*, 355 U. S. 534; *Toomer* v. *Witsell*, 334 U. S. 385. Moreover, federal courts of equity withhold their relief only "in furtherance of a recognized, defined public policy," *Meredith* v. *Winter Haven*, 320 U. S. 228, 235, and appellants point to no such policy to be served by remission, or as to what "definite

determinations" are essential to proper consideration of the questions.

The proposition upon which appellants rely is not sustained by the cases they cite. In *Albertson* v. *Millard*, 345 U. S. 242, the Michigan statutes contained definitions susceptible of more than a single interpretation, so that the case had to be remitted to the state court for constructional purposes. Similarly, in *Government and Civil Employees Organizing Committee* v. *Windsor*, 353 U. S. 364, it was uncertain whether the plaintiff organization was a "labor union or labor organization" within the meaning of the Alabama statute under attack, and, similarly, the case was held in abeyance pending that determination in the state courtroom. Likewise, in *American Federation of Labor* v. *Watson*, 327 U. S. 582, it was necessary to resolve, prior to reaching the constitutional issues, the questions whether Florida's right-to-work constitutional amendment was self-executing, and other important issues of state law as well, to take the guesswork out of the decisions. And in *Spector Motor Service* v. *McLaughlin*, 323 U. S. 101, it was necessary to construe a Connecticut tax statute to determine whether it was at all applicable to the party complaining. None of these problems is present in the cases at bar.

Appellants' additional claim (Brief, pp. 36-37), that the constitutional determinations should have been postponed pending state court determination of the possibilities of severability of these laws, is equally without merit. Chapter 35 is a statute single both in purpose and prohibition; as to it, the occasion for severance is foreclosed. See *Williams* v. *Standard Oil Co.*, 278 U. S. 235. Chapter 31 contains no legislative suggestion of separability, and is presumptively unseverable. *Williams* v. *Standard Oil Co.*, supra, 278 U. S. at 241-242. Nor is the issue as to Chapter 32 resolved by its severability clause—"an aid merely; not

an inexorable command," *Dorchy* v. *Kansas*, 264 U. S. 286, 290; *Williams* v. *Standard Oil Co.*, supra, 278 U. S. at 241—which could not save any part which might be held unobjectionable and separable unless it appears that "standing alone, effect can be given to it, and that the legislature intended the provision to stand in case others included in the act and held bad should fall." *Williams* v. *Standard Oil Co.*, supra, 278 U. S. at 241. Here, as in *Meyer* v. *Wells, Fargo & Co.*, 223 U. S. 298, 302, there is "no possible construction on which it could be upheld without being so remodeled that it would be a mere speculation whether the legislature would have passed it in the new form." See also *Williams* v. *Standard Oil Co.*, supra; *Myers* v. *Anderson*, 238 U. S. 368. In any event, the action of the District Court is free from criticism. Absent a controlling state decision, it properly determined for its purposes the severability issue, *Dorchy* v. *Kansas*, supra, 264 U. S. at 291; *Williams* v. *Standard Oil Co.*, supra; *Myers* v. *Anderson*, supra; and the decisions of this Court make it plain that the possibility of a state decision favorable to separability of a law, whether or not it contains a severability clause, is not sufficient to require postponement of the federal court's decision on the constitutional issues. *Dorchy* v. *Kansas*, supra; *Williams* v. *Standard Oil Co.*, supra; *Meyer* v. *Wells, Fargo & Co.*, supra. See also *Morey* v. *Doud*, 354 U. S. 457; *Skinner* v. *Oklahoma*, 316 U. S. 535.

B. *The Cases at Bar Present Circumstances Which Warranted Enjoining the Criminal Statutes in Suit.*

The remaining contention advanced in support of appellant's argument that the District Court should have withheld exercise of its jurisdiction in the cases at bar is bottomed upon the time-honored rule that equity will not enjoin enforcement of criminal statutes. Appellants answer that this rule is not inflexible and submit that, under the circum-

stances presented here, its application was neither required nor warranted.

The circumstances of these cases have already been detailed in our Statement of the Case, supra at 8-10, 13-14, where appellees showed great present and greater potential injury to their property and the personal rights of their members, contributors and attorneys. This showing is not controverted. And appropros its consideration of the argument made here, the District Court summarized:

> The penalties prescribed by the statutes are heavy and they are applicable not only to the corporation[s] but to every person responsible for the management of [their] affairs, and under Chapter 32 of the statutes each day's failure to register and file the required information constitutes a separate punishable offense. The deterrent effect of the statutes upon the acquisition of members, and upon the activities of the lawyers of the plaintiffs under the threat of disciplinary action has already been noted, and the danger of immediate and persistent efforts on the part of the state authorities to interfere with the activities of the plaintiffs has been made manifest by the repeated public statements (R. 70).

And concluded:

> The facts of the cases abundantly justify the exercise of the equitable powers of the court. *Ex parte Young*, 209 U. S. 123, 147; *Truax* v. *Raich*, 239 U. S. 33; *Western Union Telegraph Co.* v. *Andrews*, 216 U. S. 165; *Sterling* v. *Constantin*, 287 U. S. 378 (*Id.*).

Circumstances such as these prompted this Court to announce and frequently follow the rule that equitable jurisdiction will be exercised to enjoin the threatened en-

forcement of state criminal statutes which contravene the Federal Constitution whenever it is essential in order to protect property rights and the rights of persons against injury otherwise irremediable. See, e.g., *Tyson & Bro.* v. *Blanton*, 273 U. S. 418; *Pierce* v. *Society of Sisters*, 268 U. S. 510; *Hygrade Provision Co.* v. *Sherman*, 266 U. S. 497; *Packard* v. *Banton*, 264 U. S. 140; *Terrace* v. *Thompson*, 263 U. S. 197; *Adams* v. *Tanner*, 244 U. S. 590; *Truax* v. *Raich*, 239 U. S. 33.[43]

Appellants do not dispute the vitality of this, but they say that it may not be relied upon here because "appellees merely alleged in their complaints that appellants were charged with the enforcement of Chapters 31, 32 and 35" (App. Brief, p. 23). To this we say that the threat to enforce these statutes is no less real and imminent than that sustained by this Court in *Euclid* v. *Ambler Realty Co.*, 272 U. S. 365; *Pierce* v. *Society of Sisters, supra; Truax* v. *Raich, supra; Pennsylvania* v. *West Virginia*, 262 U. S. 553; and *Vicksburg Waterworks Co.* v. *Vicksburg*, 185 U. S. 65. See *Carter* v. *Carter Coal Co.*, 298 U. S. 238, 284, 287-288.[44]

True, as appellees stress, the Court has observed that the fact that "state officials stood ready to enforce their duties should they acquire knowledge of violations" was not sufficient for the exercise of equity jurisdiction in the circumstances of *Watson* v. *Buck*, 313 U. S. 387. But, we submit that *Watson* v. *Buck*, neither in terms nor in effect overruled those authorities. For in *Gayle* v. *Browder*, 352

[43] Cf. *Hynes* v. *Grimes Packing Co.*, 337 U. S. 86; *Utah Fuel Co.* v. *National Bituminous Coal Comm.*, 306 U. S. 56; *Philadelphia Co.* v. *Stimson*, 223 U. S. 605, all of which involved federal statutes or regulations with punitive sanctions.

[44] And see Davis, Ripeness of Governmental Action for Judicial Review, 68 Harv. L. Rev. 1122 (1955).

U. S. 903, a later case presenting the same factual issue, this Court affirmed 142 F. Supp. 707 (M. D. Ala. 1956) over the state officials' declaimers of threatened enforcement and an argument based upon *Watson* v. *Buck* (Jurisdictional Statement for Appellants in No. 343, October Term 1956, pp. 3, 6-8; Jurisdictional Statement for Appellants in No. 342, October Term 1956, pp. 3-4, 7, 12, 15; Petition For Rehearing in No. 342, pp. 2-3). See *Morrison* v. *Davis*, 252 F. 2d 102 (5th Cir. 1958), cert. denied 356 U. S. 968.

Moreover, whatever may be the rule as to threatened enforcement in other circumstances, this Court, when faced with a factual situation not unlike this in *Euclid* v. *Ambler Realty Co.*, 272 U. S. 365, ruled that where legislation prescribing penalties for violations is assailed on grounds of repugnance to the Fourteenth Amendment and there is a showing that legislation of its own force operates to destroy rights secured thereunder and the attack is directed against the legislation in its entirety rather than any specific provision or provisions

> the existence and maintenance of the [legislation], in effect constitutes a present invasion of [appellants'] property rights and a threat to continue it. Under these circumstances, the equitable jurisdiction is clear (*Id.*, at 386).

Finally, what we have here is legislation making the further prosecution of litigation in federal courts a crime under the laws of the Commonwealth of Virginia. This is in effect an effort to curtail the jurisdiction of federal courts—litigation in the federal courts of the type thwarted by these statutes can only be maintained by litigants supported by appellees. Such a calculated interference with the right to maintain litigation in federal courts is not the

proper subject for state court determination. Rather, it should be the particular province of the federal courts to protect their jurisdiction.

CONCLUSION

Failure to affirm the judgment of the court below would produce the same results as would have occurred on failure to issue the injunction herein involved:

> We have come perforce to these final conclusions since the contrary position cannot be justly entertained. If the Acts of the General Assembly of Virginia should be held to outlaw the activities of the plaintiff corporations, the Commonwealth would be free to use all of its resources in its search for lawful methods to postpone and, if possible, defeat the established constitutional rights of a body of its citizens, while the colored people of the state would be deprived of the resources needed to resist the attack in the state and federal courts. The duty of this court to avoid such a situation, if possible, is manifest (R. 93).

WHEREFORE, appellees respectfully submit the judgment of the district court should be affirmed.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing Brief for Appellees have been served by depositing the same in a United States mail box, with first class postage prepaid, to the following counsel for appellants:

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